Criminal Revision No.55 of 2004.

IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

...

Criminal Revision No.55 of 2004.

Date of Decision: March 04, 2010.

Kartar Singh **...**Petitioner

VERSUS

State of Punjab and another **...**Respondents

1. Whether the Reporters of Local Newspapers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

CORAM: **HON'BLE MR. JUSTICE MOHINDER PAL.**

Present: None for the petitioner.

Mr. Raghbir Chaudhary, Senior Deputy Advocate General, Punjab.

Ms. Ranjan Salaria, Advocate,
amicus curiae,
for accused-respondent No.2.

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MOHINDER PAL, J.

Bhagwati Charan (accused-respondent No.2), in a case registered against him at the instance of Kartar Singh (complainant-petitioner), was convicted by the trial Court under Section 353 of the Indian Penal Code (for short `the Code') and sentenced to undergo rigorous imprisonment for six months and to pay fine of Rs.500/- in default whereof to undergo further rigorous

imprisonment for one month. On appeal by Bhagwati Charan, the lower Appellate Court set aside the judgment of conviction and the sentence order recorded by the trial Court against him and acquitted him of the offence under Section 353 of the Code by giving him the benefit of doubt. Hence this revision petition by the complainant-petitioner.

This revision petition was admitted for hearing on 12.9.2005.

The instant case was registered on the written complaint made by complainant-petitioner Kartar Singh before the Station House Officer, Division No.II, Pathankot 14.5.1996. Complainant Kartar Singh, at the relevant time, was employed as Inspector, Punjab Roadways, Pathankot. On 14.5.1996, he was checking the buses at Chakki Bridge, Pathankot, which were coming from Delhi, Jalandhar and Chandigarh etc. The complainant boarded bus bearing registration No.PB-12-8023 which was going from Pathankot to Delhi at about 6.20 P.M from Bus Stand in order to check the buses at Chakki Bridge, Pathankot. Bhagwati Charan (accused-respondent No.2), Driver No.126 and Harish Kumar (co-accused of respondent No.2) Driver No.204, who has since died, also boarded the said bus. When the bus reached near Chakki Bridge near Industrial Training Institute, Pathankot, accused-respondent No.2 put off the turban of petitioner Kartar Singh and delivered the same to Harish Kumar (since deceased). Accused-respondent No.2 Bhagwati

Charan also slapped the petitioner and got the said bus stopped. Thereafter, both of them ran away. Gurbachan Singh was Driver of the Bus and Ashok Kumar was Conductor on duty. The complainant-petitioner alleged that his religious sentiments had been hurt by this act and conduct of the accused.

As mentioned above, the trial Court, after recording evidence and hearing the learned counsel for the parties, convicted and sentenced accused-respondent No.2, as mentioned above. However, the lower appellate Court, on appeal by accused-respondent No.3, acquitted him in the case.

No doubt, it is well settled that the High Court will ordinarily not interfere in revision with an order of acquittal except in exceptional cases where the interest of public justice requires interference for the correction of a manifest illegality or the prevention of gross miscarriage of justice and that High Court should not re-appreciate the evidence to reach a finding different from the Court acquitting the accused except to prevent miscarriage of justice, but each case has its own facts. In this case, the facts and circumstances of the case, to be discussed hereinafter, disclose that the lower appellate Court, while setting aside the judgment of conviction and the sentence order passed by the trial Court, rendered the impugned judgment without considering material evidence on record and for that reason the impugned judgment is consisted of faulty reasoning. The lower appellate Court, while passing the

impugned judgment acquitting the accused-respondent No.2 of the offence under Section 353 of the Code, did not rightly consider all aspects of the case.

The prosecution, in order to prove its case against the accused-respondent, had examined complainant-petitioner Kartar Singh (P.W.1), Ashok Kumar (P.W.2), Kewal Kishore (P.W.3), Bhagat Singh (P.W.4), Lakhwinder Singh (P.W.5), Head Constable Ashok Kumar (P.W.6), Sukhwinder Pal (P.W.7), Head Constable Prem Pal (P.W.8) and Assistant Sub Inspector Tara Chand (P.W.9). When examined under Section 313 of the Code of Criminal Procedure, accused-respondent No.2 denied the prosecution allegations and pleaded false implication. He examined Gurbachan Singh, Driver of Bus No.PB-12-8023, in which the occurrence had taken place, as D.W.1.

It is significant to note that the prosecution had not examined Gurbachan Singh in support of its case. The apprehension of the prosecution that Gurbachan Singh, Driver of Bus No.PB-12-8023 would not support the prosecution case proved to be true when he appeared in favour of the accused-respondent No.2 as D.W.2.

Ashok Kumar, Conductor of Bus No.PB-12-8023, appeared as P.W.2 and supported the prosecution version as unfolded by complainant-petitioner Kartar Singh on all its material particulars. Statements of complainant-petitioner Kartar Singh (P.W.1) and eye-witness Ashok Kumar (P.W.2) are quite

consistent and corroborative of each other. They are without any material discrepancy. Both Kartar Singh and Ashok Kumar were subjected to a searching cross-examination by the learned counsel for the accused in the trial Court, but nothing could be elicited therefrom which could doubt the veracity of their statements. Lakhwinder Singh (P.W.5), who was the General Manager of the Punjab Roadways at the relevant time, deposed that petitioner-complainant Kartar Singh, who at the relevant time was Inspector of the Punjab Roadways, Pathankot, was directed to check the Buses at Chakki Bridge, Pathankot. It, thus, stands proved on record that petitioner-complainant was on duty when the accused-respondent No.2 had assaulted and used criminal force to deter him from discharging his duties.

No doubt, there is some delay in registration of the case against the accused, but it stands well-explained on record. The occurrence pertains to 14.5.1996 when the written complaint as made to the police by the petitioner-complainant. On the said complaint, endorsement had been made by the Station House Officer on 17.5.1996 directing Assistant Sub Inspector Tara Chand (P.W.9) to take necessary action. When no case was registered, Lakhwinder Singh, General Manager, Punjab Roadways, Pathankot (P.W.5) wrote D.O. Letter dated 18.5.1996 to Senior Superintendent of Police for taking necessary action in the matter. It shows that the complaint had been lodged with the police by the complainant-petitioner without any delay but action had been taken and the F.I.R was

registered on 23.5.1996 after the intervention of the Senior Superintendent of Police. There was, thus, no delay in reporting the matter to the police.

For the aforesaid reasons, this revision petition is allowed and the impugned judgment dated 21.8.2003 rendered by the learned Additional Sessions Judge, Gurdaspur, acquitting accused-respondent No.2 Bhagwati Charan of the offence under Section 353 of the Code by setting the judgment of conviction and the sentence order dated 12.12.2001 passed by the Judicial Magistrate Ist Class, Pathankot, is set aside. In result, the the judgment of conviction and the sentence order dated 12.12.2001 passed by the Judicial Magistrate Ist Class, Pathankot, convicting and sentencing accused-respondent No.2 Bhagwati Charan under Section 353 of the Code, as mentioned above, are restored.

Bail bonds of accused-respondent No.2 Bhagwati Charan are accordingly cancelled and he be taken into custody forthwith to serve the sentence awarded in this case. Necessary information in this regard be sent to the Chief Judicial Magistrate, Gurdaspur.

March 04, 2010. **(MOHINDER PAL)**
ak **JUDGE**